IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

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| BENJAMIN ELLEGOOD, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | Civil Action No. 01-213-SLR |
| | ) | |
| STANLEY TAYLOR, ROBERT SNYDER, DAVID HOLMAN and JANICE HENRY, | ) | |
| | ) | |
| Defendants. | ) | |

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Benjamin Ellegood, Wilmington, Delaware. Plaintiff, pro se.

Gregory E. Smith, Deputy Attorney General, State of Delaware Department of Justice, Wilmington, Delaware. Counsel for Defendants.

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**MEMORANDUM OPINION**

Dated: March 18, 2002
Wilmington, Delaware

**ROBINSON, Chief Judge**

## I. INTRODUCTION

On April 4, 2001, plaintiff Benjamin Ellegood filed this action against defendants Stanley Taylor, Robert Snyder, David Holman and Janice Henry alleging civil rights violations under 42 U.S.C. § 1983 in that inadequate medical care and the denial of recreation violated his Eighth and Fourteenth Amendment rights. (D.I. 2) Plaintiff subsequently amended his complaint, alleging that a denial of access to the courts violated his Fourteenth Amendment right to Due Process. (D.I. 3) Currently before the court is defendants' motion to dismiss the complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). (D.I. 10) For the reasons stated below, defendants' motion is granted in part and denied in part.

## II. BACKGROUND

At the time of filing, plaintiff was a pre-trial detainee[1] within the Delaware Department of Correction, being held at the Delaware Correctional Center in Smyrna, Delaware. (D.I. 11 at ¶ 1) Plaintiff has a myriad of health concerns and was housed

[1]The relevant constitutional provision is not the Eighth Amendment but the Due Process Clause of the Fourteenth Amendment. "[T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law." Ingraham v. Wright, 430 U.S. 651, 671 n.40 (1977). Case law has established, however, that pre-trial detainees are afforded essentially the same level of protection under the Fourteenth Amendment; therefore, an Eighth Amendment analysis is still appropriate. See, e.g., City of Revere v. Mass. Gen. Hosp., 436 U.S. 239 (1983).

permanently in the infirmary. (D.I. 2 at 3) He is a diabetic, needing insulin twice a day. (Id.) Plaintiff is also in need of a prosthesis for his left leg. (Id.) Plaintiff alleges that, before entering the prison system, he was under the care of Dr. D. Singson at Gilpin Medical Center for his diabetic condition and had physical therapy three times a week. (Id.) Upon being incarcerated on December 8, 2000, plaintiff contends that the "prison [was] not addressing therapy or pain medication that [he] was getting in [the] street under [D]octor D. Singson." (Id.) Plaintiff states that all he does is "eat and sleep" and is suffering pain. (Id.)

Plaintiff further alleges that he has been denied access to the courts in that he was not permitted to go to the law library from the infirmary and was told that he would have to write a law library slip to get anything from the law library. (D.I. 3 at 1) However, plaintiff contends that there were no slips available or that he does not know where to look. (Id.) Plaintiff further alleges that he has been denied recreation time by defendant Holman. (Id. at letter to Stanley Taylor, Jan. 16, 2001)

**III. STANDARD OF REVIEW**

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage

Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't, 91 F.3d 451, 456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

## IV. DISCUSSION

### A. Plaintiff's Inadequate Medical Care Claim

To state a violation of the Eighth Amendment right to adequate medical care, plaintiff "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976); accord White v. Napoleon, 897 F.2d 103, 109 (3d Cir. 1990). Plaintiff must demonstrate: (1) that he had a serious

medical need, and (2) that the defendant was aware of this need and was deliberately indifferent to it. See West v. Keve, 571 F.2d 158, 161 (3d Cir. 1978); see also Boring v. Kozakiewicz, 833 F.2d 468, 473 (3d Cir. 1987). Either actual intent or recklessness will afford an adequate basis to show deliberate indifference. See Estelle, 429 U.S. at 105.

The seriousness of a medical need may be demonstrated by showing that the need is "'one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention.'" Monmouth County Corr. Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (quoting Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979)). Moreover, "where denial or delay causes an inmate to suffer a life-long handicap or permanent loss, the medical need is considered serious." Id.

As to the second requirement, an official's denial of an inmate's reasonable requests for medical treatment constitutes deliberate indifference if such denial subjects the inmate to undue suffering or a threat of tangible residual injury. Id. at 346. Deliberate indifference may also be present if necessary medical treatment is delayed for non-medical reasons, or if an official bars access to a physician capable of evaluating a prisoner's need for medical treatment. Id. at 347. However, an official's conduct does not constitute deliberate indifference

unless it is accompanied by the requisite mental state. Specifically, "the official [must] know . . . of and disregard . . . an excessive risk to inmate health and safety; the official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994). While a plaintiff must allege that the official was subjectively aware of the requisite risk, he may demonstrate that the official had knowledge of the risk through circumstantial evidence and "a fact finder may conclude that a[n] . . . official knew of a substantial risk from the very fact that the risk was obvious." Id. at 842.

The law is clear that mere medical malpractice is insufficient to present a constitutional violation. See Estelle, 429 U.S. at 106; Durmer v. O'Carroll, 991 F.2d 64, 67 (3d Cir. 1993). Prison authorities are given extensive liberty in the treatment of prisoners. See Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979); see also White, 897 F.2d at 110 ("[C]ertainly no claim is stated when a **doctor** disagrees with the professional judgment of another doctor. There may, for example, be several acceptable ways to treat an illness.") (emphasis in original). The proper forum for a medical malpractice claim is in state court under the applicable tort law. See Estelle, 429 U.S. at 107.

In the case at bar, plaintiff does not claim that he has been denied medication or therapy for his condition. Rather, plaintiff alleges that the treatment he received in prison was not the treatment prescribed by Dr. Singson. (D.I. 2 at 3) "[C]ourts will not 'second-guess the propriety or adequacy of a particular course of treatment [which] remains a question of sound professional judgment.'" Boring, 833 F.2d at 473 (citing Pierce, 612 F.2d at 762). "Where the plaintiff has received some care, inadequacy or impropriety of the care that was given will not support an Eighth Amendment claim." Norris v. Frame, 585 F.2d 1183, 1186 (3d Cir. 1978) (citing Roach v. Kligman, 412 F. Supp. 521 (E.D. Pa. 1976)). Plaintiff's challenge to the medical treatment that he received does not rise to a constitutional violation, as plaintiff alleges only the denial of a specific course of treatment, and fails to suggest deliberate indifference by defendants. Thus, plaintiff fails to state a claim for inadequate medical care pursuant to the Eighth Amendment.

**B. Plaintiff's Access to Court Claim**

It is well established that prisoners have a constitutional right of access to the courts. "To state a claim that his constitutional right to access the court was violated, plaintiff must allege facts demonstrating that defendants deliberately and maliciously interfered with his access to the courts, and that such conduct materially prejudiced a legal action he sought to

pursue." Smith v. O'Connor, 901 F. Supp. 644, 649 (S.D.N.Y. 1995); see Morello v. James, 810 F.2d 344, 347 (2d Cir. 1987).

The fundamental constitutional right of access to the courts requires prison authorities to provide prisoners with adequate law libraries or adequate assistance with the preparation and filing of meaningful legal papers. See Bounds v. Smith, 430 U.S. 817, 828 (1977). However, "[t]he Constitution does not require that prisoners . . . be able to conduct generalized research, but only that they be able to present their grievances to the courts." Lewis v. Casey, 518 U.S. 343, 359 (1996). Therefore, an inmate must demonstrate that he has, or will, suffer actual harm. See generally id. In this case, plaintiff fails to allege that he has suffered, or will suffer, harm caused by an alleged denial of access to the courts. Plaintiff's claim must fail pursuant to Rule 12(b)(6).

**C. Plaintiff's Denial of Recreation Claim**

Because plaintiff was a pre-trial detainee at the time his claims arose, they are governed by the Due Process guarantees of the Fourteenth Amendment. See Thompson v. County of Medina, 29 F.3d 238, 242 (6th Cir. 1994). Due process requires that a "detainee may not be punished prior to an adjudication of guilt." Bell v. Wolfish, 441 U.S. 520, 535 (1979). The government may detain an individual; the necessary inquiry is whether the conditions and restrictions of the detention amount to

punishment. Id. at 536-37. "A court must determine whether a confinement . . . restriction is punitive by weighing the evidence that it is intended to punish, purposeless, or arbitrary against the possibility that it is 'an incident of some other legitimate governmental purpose,' such as 'maintaining institutional security and preserving internal order.'" Simmons v. City of Phila., 947 F.2d 1042, 1068 (3d. Cir. 1991) (quoting Bell, 441 U.S. at 538, 546)).

The denial of exercise or recreation can result in a constitutional violation. See French v. Owens, 777 F.2d 1250, 1255 (7th Cir. 1985). See, e.g., Spain v. Procunier, 600 F.2d 189, 199 (9th Cir. 1979) (finding Eighth Amendment violation where some prisoners were completely denied exercise and remaining population was limited to less than five hours of exercise per week). Indeed, regular outdoor exercise is important to the physical and psychological well being of inmates. See Frazier v. Ward, 426 F. Supp. 1354, 1367-69 (N.D.N.Y. 1977). However, the lack of exercise can only rise to a constitutional level "where movement is denied and muscles are allowed to atrophy, [and] the health of the individual is threatened . . . ." Id. A constitutional violation will occur when the deprivation of exercise occurs for a "prolonged period of time and the plaintiff can demonstrate a tangible physical harm which resulted from the denial of exercise." Castro v.

Chesney, No. 97-4983, 1998 WL 767467, at *12 (E.D. Pa. Nov. 3, 1998). In order to demonstrate a deprivation of the constitutional right to exercise, an inmate must still meet the Eighth Amendment requirements and show deliberate indifference on the part of prison officials. See generally Farmer, 511 U.S. 825.

In the present case, plaintiff complains of what appears to be the complete denial of recreation for a period of at least four months. (D.I. 2) Accepting as true all of the facts alleged in the complaint, the court finds that such a limitation on exercise may be harmful to a prisoner's health and, if so, would amount to "cruel and unusual" punishment. Therefore, defendants' motion to dismiss plaintiff's denial of recreation claim must be denied.[2]

**D. Defendants' Respondeat Superior Defense**

Defendants contend that they cannot be held liable based upon their supervisory positions. (D.I. 11 at ¶¶ 8-9) The Third Circuit has stated that the standard for liability of supervisory public officials is no less stringent than the standard of liability for the public entities that the officials serve. See

[2]Attached to plaintiff's complaint is a memorandum from defendant Holman stating that unsentenced inmates housed in the infirmary, unlike sentenced inmate patients, are not entitled to outside recreation. (D.I. 2) Based on the record presented at this stage of the proceedings, the court is unable to assess whether this policy is instituted for a legitimate governmental purpose or to maintain security.

Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989). In either case, a person cannot be the moving force behind a constitutional violation of a subordinate unless that person has exhibited deliberate indifference to the plight of the person deprived. See id. (citing City of Canton, Ohio v. Harris, 489 U.S. 378, 389 (1989); Lipsett v. Univ. of Puerto Rico, 864 F.2d 881, 902 (1st Cir. 1988)).

"A defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of respondeat superior." Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (citing Parratt v. Taylor, 451 U.S. 527, 537 n.3 (1981); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976)). Personal involvement can be established through allegations of either personal direction or actual knowledge and acquiescence (deliberate indifference); however, such allegations must be made with particularity. See id. But see Boykins v. Ambridge Area Schl. Dist., 621 F.2d 75, 80 (3d Cir. 1980) (holding civil rights complaints adequate when time, place and persons responsible are stated); Hall v. Pa. State Police, 570 F.2d 86, 89 (3d. Cir. 1978) (same).

The Supreme Court has held that supervising officials do not violate the constitutional rights of victims of misconduct unless they have had an affirmative part in the misconduct. See Rizzo

v. Goode, 423 U.S. 362, 377 (1976). The Third Circuit has also required that supervising officials play an affirmative role in violating the plaintiff's rights and that an official's misconduct "cannot be merely a failure to act." Commonwealth of Pa. v. Porter, 659 F.2d 306, 336 (3d. Cir. 1981).

Plaintiff has shown insufficient facts to suggest that defendants Taylor, Snyder or Henry had actual knowledge of his concerns of civil rights violations. Therefore, these defendants cannot be held liable under the theory of respondeat superior. However, there are sufficient allegations of record (D.I. 2 at 3, memorandum from D. Holman) to suggest both personal involvement and actual knowledge, and acquiescence without explanation of a legitimate justification, by defendant Holman. Therefore, defendant Holman may be held liable under the theory of respondeat superior.

**E. Defendants' Qualified Immunity Defense**

Defendants contend that they cannot be held liable in their individual capacities under the doctrine of qualified immunity. (D.I. 11 at ¶ 10) Government officials performing discretionary functions are immune from liability for civil damages when their conduct does "not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). A right is "clearly established" when "[t]he contours of the right [are]

sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987); accord In re City of Phila. Litig., 49 F.3d 945, 961 (3d Cir. 1995).

When analyzing a qualified immunity defense, the court must first ascertain "whether plaintiff has [alleged] a violation of a constitutional right at all." Larsen v. Senate of the Commonwealth of Pa., 154 F.3d 82, 86 (3d Cir. 1998). Next, the court must inquire whether the right was "'clearly established' at the time the defendants acted." In re City of Phila. Litig., 49 F.3d at 961 (quoting Acierno v. Cloutier, 40 F.3d 597, 606 (3d Cir. 1994)). Finally, the court must determine whether "'a reasonable person in the official's position would have known that his conduct would violate that right.'" Open Inns, Ltd. v. Chester County Sheriff's Dep't, 24 F. Supp.2d 410, 419 (E.D. Pa. 1998) (quoting Wilkinson v. Bensalem Township, 822 F. Supp. 1154, 1157 (E.D. Pa. 1993) (citations omitted)). If on an objective basis "'it is obvious that no reasonably competent [official] would have concluded that [the actions were lawful],'" defendants are not immune from suit; however, "'if [officials] of reasonable competence could disagree on this issue, immunity should be recognized.'" In re City of Phila. Litig., 49 F.3d at 961-62 (quoting Malley v. Briggs, 475 U.S. 335, 341 (1986)).

In the case at bar, plaintiff has sufficiently stated a claim for an Eighth Amendment cruel and unusual punishment violation. Also, at the time of the events at issue, plaintiff's Eighth Amendment right against cruel and unusual punishment was clearly established. Construing the complaint in favor of plaintiff, the court finds that defendants are not entitled to qualified immunity at this time.

**F. Defendants' Eleventh Amendment Immunity Defense**

Defendants contend that they cannot be held liable in their official capacities under the Eleventh Amendment. (D.I. 11 at ¶¶ 6-7) "[I]n the absence of consent, a suit [in federal court] in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). This preclusion from suit includes state officials when "the state is the real, substantial party in interest." Id. at 101 (quoting Ford Motor Co. v. Dep't of Treasury, 323 U.S. 459, 464 (1945)). "Relief sought nominally against an [official] is in fact against the sovereign if the decree would operate against the latter." Id. (quoting Hawaii v. Gordon, 373 U.S. 57, 58 (1963)). A State, however, may waive its immunity under the Eleventh Amendment. Such waiver must be in the form of an "unequivocal indication that the State intends to consent to federal jurisdiction that otherwise would be barred by the

Eleventh Amendment." Ospina v. Dep't of Corrs., 749 F. Supp. 572, 578 (D. Del. 1990) (quoting Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 238 n.1 (1985)). Because the State of Delaware has not consented to plaintiff's suit or waived its immunity, the Eleventh Amendment protects defendants from liability in their official capacities.

## V. CONCLUSION

For the reasons stated, defendants' motion to dismiss is granted with respect to all claims except plaintiff's claim of denial of recreation against defendant David Holman in his individual capacity. An appropriate order shall issue.

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| | ) | |
| Defendants. | ) | |

**O R D E R**

At Wilmington this 18th day of March, 2002, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that defendants' motion to dismiss (D.I. 10) is granted with respect to all claims except plaintiff's claim of denial of recreation against defendant David Holman in his individual capacity.

IT IS FURTHER ORDERED that:

1. All motions to join other parties and amend the pleadings shall be filed on or before **April 15, 2002.**

2. Discovery shall be completed on or before **June 17, 2002.**

3. All dispositive motions shall be filed on or before **July 15, 2002.** Answering briefs shall be filed on or before **August 15, 2002.** Reply briefs may be filed on or before **August 29, 2002.**

Sue L. Robinson
United States District Judge